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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Application for Authority Pursuant to Section 214)
of the Communications Act of 1934, as amended)
for Transfer of Control of Authorizations to)
Provide International Resold Communications)
Services)

CS Docket No. 98-178

REPLY COMMENTS OF MCI WORLDCOM, INC.

MCI WORLDCOM, Inc. (MCI WorldCom) hereby submits its reply in response to comments regarding the joint application of Tele-Communications, Inc. (TCI) and AT&T Corp. (AT&T) (or collectively Applicants or AT&T/TCI) for approval of their proposed merger (the Merger).¹

The parties generally agree that the merger should be approved, albeit with certain conditions. Further, because the Telecommunications Act of 1996 (1996 Act) is technology neutral, many parties agreed that there should be no regulatory distinction between telecommunications services provided over cable facilities versus the traditional telephony infrastructure. Accordingly, as MCI WorldCom has argued and others have agreed, to the extent that AT&T/TCI uses its cable television infrastructure to provide local, long distance, advanced telecommunications or high-speed Internet access services,² AT&T/TCI should be subject to the

¹ Tele-Communications, Inc., Transferor, AT&T Corp., Transferee, Application for Authority Pursuant to Section 214 of the Communications Act of 1934, as amended, for Transfer of Control of Authorizations to Provide International Resold Communications Services, File No. I-T-C-98-178 (filed Sept. 14, 1998) (Application).

² Application at 15.

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requirements of Title II, particularly sections 251(a) and (b) of the 1996 Act.³ In addition, MCI WorldCom believes that the record supports the imposition of network unbundling requirements on AT&T/TCI by this Commission.

I. THE REQUIREMENTS OF SECTION 251(a) AND (b) SHOULD APPLY TO AT&T/TCI

As MCI WorldCom stated in its comments, to the extent AT&T/TCI uses any network facilities, including its cable infrastructure, to provide local telephony services, it should be subject to the interconnection, resale, number portability, dialing parity, rights-of-way and reciprocal compensation requirements of section 251(a) and (b), like all other local exchange carriers (LECs).⁴ The parties generally agree that, regardless of the technology used, the provision of telecommunications services renders an entity a telecommunications carrier, subject to the requirements of section 251(a) and (b).⁵ In addition, most commenters agreed that Title II of the Communications Act applies to the provision of telecommunications services, and thus should be applicable to telecommunications services provided by AT&T/TCI.

³ Several parties also agree with MCI WorldCom that AT&T should cause @Home to waive the exclusivity obligations which prohibit @Home's "Principal U.S. Cable Partners" from obtaining high-speed residential consumer Internet service from any other source other than through @Home until June 4, 2002. *See, e.g.*, Comments of America Online, Inc. at 31 (America Online Comments); Comments in Opposition of GTE at 4 (GTE Comments); Comments of Ameritech at 22 (Ameritech Comments). The parties also agree that additional cable cost allocation rules are necessary to protect cable subscribers once rate regulation ends. Appropriate cost allocation rules will ensure that neither basic nor cable programming service customers are forced to subsidize cable operators' provision of data and Internet services. *See, e.g.*, Petition of U S West to Deny Applications or To Condition Any Grant at 37 (U S West Comments); Petition to Deny of Consumers Union, Consumer Federation of America, and Office of Communication, Inc. of the United Church of Christ at 7 (Consumers Union Comments).

⁴ MCI WorldCom Comments at 4.

⁵ *See, e.g.*, GTE Comments at 6, 12-15; Comments of Qwest Communications Corporation at 15 (Qwest Comments).

Compliance with sections 251(a) and (b) is essential to ensure that AT&T/TCI's customers are able to access their preferred service providers and to ensure that calls may be terminated to AT&T/TCI's customers. Although the Applicants claim that "the [m]erger will increase the availability to consumers of a wide array of packaged and a la carte services — including local, long distance and wireless telecommunications services, as well as video and content-enriched high-speed Internet services,"⁶ such a la carte availability must be fully achievable. Recent statements by AT&T and TCI, however, conflict with representations in their Application.⁷ Representatives from these companies have argued that they should be permitted to create and maintain a gatekeeper status for access to their customers.⁸ This should not be permitted. AT&T/TCI's customers should have access to the service provider of their choice, whether for local, long distance or high-speed Internet access telecommunications services.

As MCI WorldCom stated in its comments, AT&T/TCI's competitors need to be able to interconnect with AT&T/TCI's network in a reasonable way that permits them to provide cable, local, long distance, or Internet services that AT&T/TCI's customers might prefer instead of AT&T/TCI's services.⁹ To that end, CLECs, ISPs and IXC's should be permitted to interconnect with AT&T/TCI's network in order to facilitate consumers' choice of competitive alternatives. Interconnection would help ensure that AT&T/TCI's subscribers are able to obtain service from

⁶ Application at 15 (emphasis in original).

⁷ Saul Hansell, *The Battle For Internet Supremacy is Shifting to the Companies That Sell the Connections to Users*, N.Y. Times, June 29, 1998, at D4 (reporting that the CEO of @Home stated that unaffiliated ISPs would not be able to access @Home's customers).

⁸ Ken Auletta, *How the AT&T Deal Will Help John Malone Get Into Your House*, The New Yorker, July 13, 1998, at 25 (The New Yorker).

⁹ MCI WorldCom Comments at 12.

the ISP of their choice without having to subscribe to both AT&T/TCI's Internet service (@Home) and their preferred ISP's service.¹⁰ Equal access to AT&T/TCI's subscribers should preserve low entry barriers and maximize consumer ISP options. Further, in order to foster diversity in content and information, the Commission should develop rules that provide all ISPs and common carriers with equal access to the facilities to provide telecommunications services.

The parties also generally agree that the imposition of resale requirements on AT&T/TCI's telecommunications services would encourage competitive pricing and discourage unjust, unreasonable and discriminatory practices.¹¹ Indeed, as MCI WorldCom stated in its comments, section 251(b)(1) requires all telecommunications carriers to make their telecommunications services available for resale, and prohibits the imposition of unreasonable or discriminatory restrictions or limitations on the resale of their telecommunications services.¹² Subscribers should not be required to purchase two subscriptions, one for @Home and another for their preferred ISP. Resale and the other requirements of section 251(b) are important tools for facilitating local competition. The Commission should therefore continue its efforts to create a competitive marketplace by conditioning the merger on AT&T/TCI's commitment to make its telecommunications services available for resale, including local, long distance or high-speed Internet access.

¹⁰ See, e.g., America Online Comments at 5.

¹¹ See, e.g., Ameritech Comments at 23; GTE Comments at 6; U S West Comments at 31; Qwest Comments at 16.

¹² MCI WorldCom maintains that, to the extent that bundling of any service with telecommunications services, such as local, long distance and advanced services, would constitute an unreasonable or discriminatory restriction on the ability of competitors to resell AT&T/TCI's services, the Commission should clarify that such bundling would violate section 251(b)(1).

If barriers to entry are raised, if transmission paths are limited or controlled, or if the number of ISPs is reduced by virtue of pricing and strategic access barriers, control over Internet content will ultimately be placed the hands of a few providers. As MCI WorldCom stated in its comments,¹³ the Commission must apply Title II regulation to the provision of high-speed Internet access services via the cable infrastructure and prohibit the merged company, or any other entity, from leveraging its dominance over multichannel video programming distribution services and exclusive control over the provision of broadband information access services. Such measures, as MCI WorldCom and others have stated, include the imposition of interconnection, resale, service unbundling and other requirements of sections 251(a) and (b).

II. THE COMMISSION SHOULD CONSTRAIN AT&T/TCI'S ABILITY TO LEVERAGE ITS MARKET POWER BY IMPOSING NETWORK UNBUNDLING REQUIREMENTS

The parties are in general agreement that the combination of the largest cable multiple system operator (MSO) in the United States --TCI¹⁴-- and the largest telecommunications company in the United States and the world --AT&T¹⁵-- would result in a company that can leverage the combined entity's monopoly over the broadband loop into other markets.¹⁶

¹³ MCI WorldCom Comments at 4-5.

¹⁴ Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, Fourth Annual Report, CS Docket No. 97-141, FCC 97-423 ¶ 161 (rel. Jan. 13, 1998) (Cable Competition Report).

¹⁵ In re Application of Teleport Communications Group, Inc., Transferor, and AT&T Corp., Transferee, For Consent to Transfer Control of Corporations Holding Point-to-Point Microwave Licenses and Authorization to Provide International Facilities-Based and Resold Communications Services, 12 Comm. Reg. (P&F) 1095 at ¶ 3 (1998).

¹⁶ See, e.g., GTE Comments at 3; U S West Comments at 16-18; Comments of SBC Communications, Inc. at 9-10 (SBC Comments); Qwest Comments at 1; Comments of Sprint Corporation at 12-14 (Sprint Comments).

Because of its dominance and monopoly position in the marketplace, we believe that AT&T/TCI should be required to provide unbundled access to its cable infrastructure.

As MCI WorldCom stated in its comments, while a large firm does not violate antitrust laws simply by reaping the competitive rewards attributable to its efficient size, nor does an integrated business offend such laws whenever one department benefits from association with a department possessing a monopoly in its own market,¹⁷ competition and consumers are harmed whenever a firm uses monopoly power in one market to acquire an unjustified competitive advantage in another market. Indeed, as some commenters pointed out, AT&T and TCI have already indicated an intent to leverage their monopoly cable broadband facilities for the provision of high-speed Internet access telecommunications services.¹⁸ TCI's CEO, John Malone recently claimed that competitors will need to "go through us" to access TCI's subscribers.¹⁹

In order to minimize the ability of the merged company to carry out a successful tying strategy between its monopoly in the multichannel video programming market and its entry into telecommunications services, particularly the provision of high-speed access telecommunications services, AT&T/TCI should be required to open its network to competitors. Failure to impose an unbundling requirement on AT&T/TCI would risk the creation of a duopoly especially for residential consumers, with AT&T/TCI and the incumbent LECs dividing between themselves

¹⁷ MCI WorldCom Comments at 9-10, citing Berkey Photo, Inc. v. Eastman Kodak Co., 603 F.2d 263, 276 (2d Cir. 1979), cert. denied, 444 U.S. 1093 (1980).

¹⁸ See, e.g., America Online Comments at 12; Consumers Union Comments at 12; GTE Comments at 37.

¹⁹ The New Yorker at 25.

the market for facilities-based network services in those geographic markets where AT&T/TCI or its partners provide cable service. While AT&T/TCI's network would not be as ubiquitous as that of the ILECs, AT&T/TCI would own the only other line into residential homes as a result of its ownership of cable broadband facilities. The public interest mandates a policy of open access to AT&T/TCI's broadband network. Therefore, the Commission should condition its approval of the merger with the requirement that AT&T/TCI provide unbundled access to its cable infrastructure for competitors.

CONCLUSION

For the foregoing reasons, the Commission should approve the merger with conditions designed to promote local competition.


Respectfully submitted,

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